

## **REMARKS**

### **Introduction**

The Applicants thank the Examiner for the courtesies extended to the undersigned attorney during the personal interview on December 20, 2005. A copy of the Interview Summary is enclosed. As discussed, claims 38-79 were pending and the Examiner had indicated claims 51-53, 54-65, 71-78 and 79 were directed to an invention different than that of Group III elected in the Response to Restriction Requirement filed March 31, 2005. As discussed and agreed upon with the Examiner, claims 54-65 and 71-78 should be re-grouped with the elected Group III and examined therewith. The Applicants have cancelled claims 51-53 and 79. Therefore, claims 38-50 and 54-78 are currently pending in this application. Reconsideration of the present application as amended and in view of the interview and the remarks below is respectfully requested.

### **Claim Objections**

Claim 67 is objected to because of certain informalities. In response to this objection, Applicants have amended claim 67. In view of this amendment, Applicants believe that this claim objection has been overcome.

### **Claim Rejections – 35 U.S.C. § 103**

Claims 38-40, 43-45, 48-50, 66 and 67 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,772,850 to Walters et al (hereinafter “Walters”) in view of U.S. Patent No. 5,959,538 to Schousek (hereinafter “Schousek”). Additionally, claims 41, 42, 46, 47 and 68-70 were rejected under 35 U.S.C. 103(a) as being unpatentable over Walters in view of Schousek in further view of U.S. Patent No. 6,330,926 to Heimbrock et al. (hereinafter “Heimbrock”).

Walters discloses a powered wheeled carriage where in operation “the drive handle 70 and potentiometer 90 are utilized to power the drive motor 44 and thus drive the auxiliary wheel 34.” Walters, Col. 10: lines 41-43. Additionally, in forward operation of Walters the drive handle is rotated forward which in turn rotates the potentiometer which varies the resistance of the potentiometer and changes the voltage of the system for use in forward drive. Schousek discloses utilizing a force sensing resistor (FSR) on vehicles ridden by the user. An FSR varies its resistance in response to pressure applied to the sensor.

The case law is clear that in order for the U.S. Patent and Trademark Office to “establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine the teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or

references when combined) must teach or suggest all the claim limitations.” Manual of Patent Examining Procedure (M.P.E.P.) Section 2143.

It is well known that when combining the content of various references “there must be some teaching, suggestion or motivation in the prior art to make the specific combination that was made by the applicant.” *In re Dance*, 48 USPQ2d 1635, 1637 (Fed. Cir. 1998); *In re Raynes*, 28 USPQ2d 1630, 1631 (Fed. Cir. 1993); *In re Oetiker*, 24 USPQ2d 1443, 1445 (Fed. Cir. 1992). “The mere fact that the prior art could be so modified would not have made the modification obvious unless the prior art suggested the desirability of the modification.” *In re Gordon*, 221 USPQ 1125, 1127 (Fed. Cir. 1984).

Moreover, the Patent and Trademark Office can satisfy its burden of establishing obviousness “only by showing some *objective* teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead an individual to combine the relevant teachings of the references.” *In re Fine*, 1837 F.2d 1071, 1073, 5 USPQ2d 1596 (Fed. Cir. 1988) (emphasis added) (citations omitted). The Federal Circuit in *In re Fine* stated that a “bald assertion” of substituting an element in a prior art reference would have been within the ordinary skill in the art is insufficient to support a finding of obviousness.” *Id.* at 1074.

#### Claim 38

As discussed in the interview, there is no motivation to combine Walters and Schousek. As mentioned above, Walters discloses the use of a potentiometer and Schousek discloses the use of an FSR sensor. One skilled in the art of motorized transports where the rider is not the operator would not look to a device where the device is ridden by the operator. Additionally, one skilled in the art of powered transports would not look to replacing a potentiometer (change in resistance based on position) with an FSR (change in resistance based on pressure) to achieve the claimed invention. Walters contains no disclosure, teaching, or suggestion of the use of a force sensor for use in driving the patient support. In addition, Applicants have claimed a “load cell” which is not an FSR as disclosed by Shousek. Walters device utilizes a change in resistance of a potentiometer which changes based on position of the handle and not based on the force of the user/operator.

Therefore, Applicants believe that claim 38 is in condition for allowance. Removal of the rejection and allowance of claim 38 is respectfully requested. If the Examiner should disagree with the Applicants’ arguments, the Examiner is asked to kindly point out with particularity where the limitation is expressly disclosed.

#### Claims 40-45

Claims 40-45 depend from claim 38. In that claim 38 is believed to be allowable, claims 40-45 are also believed to be allowable. Removal of the rejections and allowance of claims 40-45 is respectfully requested.

#### Claim 39

As discussed in the interview and above for claim 38, there is no motivation, teaching or suggestion to combine Schousek and Walters.

Therefore, Applicants believe that claim 39 is in condition for allowance. Removal of the rejection and allowance of claim 39 is respectfully requested. If the Examiner should disagree with the Applicants' arguments, the Examiner is asked to kindly point out with particularity where the limitation is expressly disclosed.

#### Claims 46-50

Claims 46-50 depend from claim 39. In that claim 39 is believed to be allowable, claims 46-50 are also believed to be allowable. Removal of the rejections and allowance of claims 46-50 is respectfully requested.

#### Claim 54

As discussed in the interview, there is no motivation, teaching or suggestion to combine Schousek and Walters. As mentioned above, Walters discloses the use of a potentiometer and Schousek discloses the use of an FSR sensor. One skilled in the art of powered transports would not look to replacing a potentiometer (change in resistance based on position) with an FSR (change in resistance based on pressure) to achieve the claimed invention. Walters contains no disclosure, teaching, or suggestion of the driving a patient support based on a force input. Additionally, Schousek/Walters fail to "a first handle operable to receive a first force input from a user and provide a first signal based on the first input" and "a second handle operable to receive a second force input from a user and provide a second signal based on the second force input."

Therefore, Applicants believe that claim 54 is in condition for allowance. Removal of the rejection and allowance of claim 54 is respectfully requested. If the Examiner should disagree with the Applicants' arguments, the Examiner is asked to kindly point out with particularity where the limitation is expressly disclosed.

#### Claims 55-65

Claims 55-65 depend from claim 54. In that claim 54 is believed to be allowable, claims 55-65 are also believed to be allowable. Removal of the rejections and allowance of claims 55-65 is respectfully requested.

#### Claim 66

As discussed in the interview and for claims 38 and 39, there is no motivation, teaching or suggestion to combine Schousek and Walters.

Therefore, Applicants believe that claim 66 is in condition for allowance. Removal of the rejection and allowance of claim 66 is respectfully requested. If the Examiner should disagree

with the Applicants' arguments, the Examiner is asked to kindly point out with particularity where the limitation is expressly disclosed.

#### Claims 67-70

Claims 67-70 depend from claim 66. In that claim 66 is believed to be allowable, claims 67-70 are also believed to be allowable. Removal of the rejections and allowance of claims 67-70 is respectfully requested.

#### Claim 71

As discussed in the interview, there is no motivation, teaching or suggestion to combine Schousek and Walters. As mentioned above, Walters discloses the use of a potentiometer and Schousek discloses the use of an FSR sensor. Additionally, one skilled in the art of powered transports would not look to replacing a potentiometer (change in resistance based on position) with an FSR (change in resistance based on pressure) to achieve the claimed invention. Walters contains no disclosure, teaching, or suggestion of the use of a force sensor for use in driving the patient support. In addition, Applicants have claimed an "elastic force sensing element" which is not an FSR as disclosed by Schousek. Walters device utilizes a change in resistance of a potentiometer which changes based on position of the handle and not based on the force of the user/operator.

Therefore, Applicants believe that claim 71 is in condition for allowance. Removal of the rejection and allowance of claim 71 is respectfully requested. If the Examiner should disagree with the Applicants' arguments, the Examiner is asked to kindly point out with particularity where the limitation is expressly disclosed.

#### Claims 72-78

Claims 72-78 depend from claim 71. In that claim 71 is believed to be allowable, claims 72-78 are also believed to be allowable. Removal of the rejections and allowance of claims 72-78 is respectfully requested.

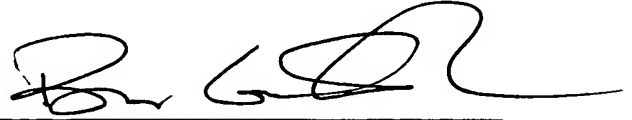
#### **Final Remarks**

In view of the foregoing amendments and remarks, Applicants submit that the application is now in condition for allowance. A Notice of Allowance is earnestly solicited.

The Examiner is invited to contact the undersigned at the telephone number provided below should any question or comment arise during reconsideration of this matter.

If necessary, Applicants request that this Response be considered a request for an extension of time for a time appropriate for the response to be timely filed. Applicants request that any required fees needed beyond those submitted with this Response be charged to the account of Bose McKinney & Evans LLP, Deposit Account Number 02-3223.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Brion G. St. Amour', written over a horizontal line.

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